

**CRIMINAL JURY INSTRUCTIONS**  
**April 2009 Release for Public Comment**  
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## 107. Pro Per Defendant

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**(The defendant[s]/ \_\_\_\_\_ <insert name[s] of self-represented defendant[s]>) (has/have) the right to be represented by an attorney in this trial, as do all criminal defendants in this country. (He/She/They) (has/have) decided instead to exercise (his/her/their) constitutional right to act as (his/her/their) own attorney in this case. Do not allow that decision to affect your verdict.**

**The rules of evidence and procedure apply to a self-represented defendant/ \_\_\_\_\_ <insert name[s] of self-represented defendant[s]>/.**

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*New [insert date of council approval]*

### BENCH NOTES

#### ***Instructional Duty***

This instruction may be given on request.

### AUTHORITY

- Basis for Right of Self-Representation ► Sixth Amendment, Constitution of the United States; *Faretta v. California* (1975) 422 U.S. 806.

#### ***Secondary Sources***

5 Witkin & Epstein, California Criminal Law (3d ed. 2000), § 248.

## 209. Witness Identified as John or Jane Doe

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**In this case, a person is called ((John/Jane) Doe/ \_\_\_\_\_ <insert other name used>). This name is used only to protect (his/her) privacy, as required by law. [The fact that the person is identified in this way is not evidence. Do not consider this fact for any purpose.]**

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*New [Insert date of council approval]*

### BENCH NOTES

#### ***Instructional Duty***

If an alleged victim will be identified as John or Jane Doe, the court has a **sua sponte** duty to give this instruction at the beginning and at the end of the trial. (Pen. Code, § 293.5(b); *People v. Ramirez* (1997) 55 Cal.App.4th 47, 58 [64 Cal.Rptr.2d 9].)

Penal Code section 293.5 provides that the alleged victim of certain offenses may be identified as John or Jane Doe if the court finds it is “reasonably necessary to protect the privacy of the person and will not unduly prejudice the prosecution or the defense.” (*Id.*, § 293.5(a).) This applies only to alleged victims of offenses under the following Penal Code sections: 261 (rape), 261.5 (unlawful sexual intercourse), 262 (rape of spouse), 264.1 (aiding and abetting rape), 286 (sodomy), 288 (lewd or lascivious act), 288a (oral copulation), and 289 (penetration by force). Note that the full name must still be provided in discovery. (*Id.*, § 293.5(a); *People v. Bohannon* (2000) 82 Cal.App.4th 798, 803, fn. 7 [98 Cal.Rptr.2d 488]; *Reid v. Superior Court* (1997) 55 Cal.App.4th 1326, 1338 [64 Cal.Rptr.2d 714].)

Give the last two bracketed sentences on request. (*People v. Ramirez, supra*, 55 Cal.App.4th at p. 58.)

### AUTHORITY

- Identification as John or Jane Doe ► Pen. Code, § 293.5(a).
- Instructional Requirements ► Pen. Code, § 293.5(b); *People v. Ramirez* (1997) 55 Cal.App.4th 47, 58 [64 Cal.Rptr.2d 9].
- Statute Constitutional ► *People v. Ramirez* (1997) 55 Cal.App.4th 47, 54–59 [64 Cal.Rptr.2d 9].

### ***Secondary Sources***

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trials, § 553.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 70, *Discovery and Investigation*, § 70.05 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.24[3] (Matthew Bender).

## 219. Reasonable Doubt in Civil Proceedings

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**The Petitioner is required to prove the allegations of the petition are true beyond a reasonable doubt.**

**Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the allegations of the petition are true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.**

**In deciding whether the Petitioner has proved the allegations of the petition are true beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the Respondent \_\_\_\_\_ *<insert what must be proved in this proceeding, e.g., “is a sexually violent predator”* beyond a reasonable doubt, you must find the petition is not true.**

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*New [insert date of council approval]*

### BENCH NOTES

#### ***Instructional Duty***

The court has a **sua sponte** duty to instruct jurors in civil proceedings relating to sexually violent predators and mentally disordered offenders in the reasonable doubt standard, but not in the presumption of innocence. *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1401 et seq.

### AUTHORITY

Instructional Requirements ► *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1401 et seq.

#### ***Related Instruction***

CALCRIM No. 220, *Reasonable Doubt*.

CALCRIM No. 3454, *Commitment as Sexually Violent Predator*.

CALCRIM No. 3456, *Initial Commitment of Mentally Disordered Offender As Condition of Parole*.

CALCRIM No. 3457, *Extension of Commitment as Mentally Disordered Offender*.

*Secondary Sources*

3 Witkin & Epstein, California Criminal Law (3d ed. 2008 supp.) Punishment, § 640A.

**640. Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With First Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide**

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[For each count charging murder,] (Y/y)ou (have been/will be) given verdict forms for guilty and not guilty of first degree murder (, /and) [second degree murder] [(, /and)] [voluntary manslaughter] [(, /and)] [involuntary manslaughter].

**You may consider these different kinds of homicide in whatever order you wish, but I can accept a verdict of guilty or not guilty of \_\_\_\_\_**  
*<insert second degree murder or, if the jury is not instructed on second degree murder as a lesser included offense, each form of manslaughter, voluntary and/or involuntary, on which the jury is instructed>* **only if all of you have found the defendant not guilty of first degree murder, [and I can accept a verdict of guilty or not guilty of (voluntary/involuntary/voluntary or involuntary) manslaughter only if all of you have found the defendant not guilty of both first and second degree murder].**

**[As with all of the charges in this case,] (To/to) return a verdict of guilty or not guilty on a count, you must all agree on that decision.**

**Follow these directions before you give me any completed and signed final verdict form[s]. [Return the unused verdict form[s] to me, unsigned.]**

- 1. If all of you agree that the People have proved beyond a reasonable doubt that the defendant is guilty of first degree murder, complete and sign that verdict form. Do not complete or sign any other verdict forms [for that count].**
- 2. If all of you cannot agree whether the defendant is guilty of first degree murder, inform me that you cannot reach an agreement and do not complete or sign any verdict forms [for that count].**

*<In addition to paragraphs 1-2, give the following if the jury is instructed on second degree murder as a lesser included offense.>*

- [3. If all of you agree that the defendant is not guilty of first degree murder but also agree that the defendant is guilty of second degree murder, complete and sign the form for not guilty of first**

**degree murder and the form for guilty of second degree murder. Do not complete or sign any other verdict forms [for that count].**

- 4. If all of you agree that the defendant is not guilty of first degree murder but cannot agree whether the defendant is guilty of second degree murder, complete and sign the form for not guilty of first degree murder and inform me that you cannot reach further agreement. Do not complete or sign any other verdict forms [for that count].]**

*<In addition to paragraphs 1–4, give the following if the jury is instructed on second degree murder as the only lesser included offense. >*

- [5. If all of you agree that the defendant is not guilty of first degree murder and not guilty of second degree murder, complete and sign the verdict forms for not guilty of both.] Do not complete or sign any other verdict forms [for that count].]**

*< In addition to paragraphs 1–4, give the following if the jury is instructed on second degree murder and only one form of manslaughter (voluntary or involuntary) as lesser included offenses. >*

- [5. If all of you agree that the defendant is not guilty of first degree murder and not guilty of second degree murder, but also agree that the defendant is guilty of (voluntary/involuntary) manslaughter, complete and sign the forms for not guilty of first degree murder and not guilty of second degree murder and the form for guilty of (voluntary/involuntary) manslaughter. Do not complete or sign any other verdict forms [for that count].**

- 6. If all of you agree that the defendant is not guilty of first degree murder and not guilty of second degree murder, but cannot agree whether the defendant is guilty of (voluntary/involuntary) manslaughter, complete and sign the forms for not guilty of first degree murder and not guilty of second degree murder and inform me that you cannot reach further agreement. Do not complete or sign any other verdict forms [for that count].**

- 7. If all of you agree that the defendant is not guilty of first degree murder, not guilty of second degree murder, and not guilty of (voluntary/involuntary) manslaughter, complete and sign the**

**verdict forms for not guilty of each crime. Do not complete or sign any other verdict forms [for that count].]**

*<In addition to paragraphs 1–4, give the following if the jury is instructed on second degree murder and both voluntary and involuntary manslaughter as lesser included offenses.>*

- [5. If all of you agree that the defendant is not guilty of first degree murder and not guilty of second degree murder, complete and sign the forms for not guilty of first degree murder and not guilty of second degree murder.**
- 6. If all of you agree on a verdict of guilty or not guilty of voluntary or involuntary manslaughter, complete and sign the appropriate verdict form for each charge on which you agree. You may not find the defendant guilty of both voluntary and involuntary manslaughter [as to any count]. Do not complete or sign any other verdict forms [for that count].**
- 7. If you cannot reach agreement as to voluntary manslaughter or involuntary manslaughter, inform me of your disagreement. Do not complete or sign any verdict form for any charge on which you cannot reach agreement.]**

*<In addition to paragraphs 1-2, give the following if the jury is not instructed on second degree murder and the jury is instructed on one form of manslaughter (voluntary or involuntary) as the only lesser included offense.>*

- [3. If all of you agree that the defendant is not guilty of first degree murder but also agree that the defendant is guilty of (voluntary/involuntary) manslaughter, complete and sign the form for not guilty of first degree murder and the form for guilty of (voluntary/involuntary) manslaughter. Do not complete or sign any other verdict forms [for that count].**
- 4. If all of you agree that the defendant is not guilty of first degree murder but cannot agree whether the defendant is guilty of (voluntary/involuntary) manslaughter, complete and sign the form for not guilty of first degree murder and inform me that you cannot reach further agreement. Do not complete or sign any other verdict forms [for that count].**

5. If all of you agree that the defendant is not guilty of first degree murder or (voluntary/involuntary) manslaughter, complete and sign the verdict forms for not guilty of each crime. Do not complete or sign any other verdict forms [for that count].

*<In addition to paragraphs 1-2, give the following if the jury is instructed on both voluntary and involuntary manslaughter, but not second degree murder, as lesser included offenses.>*

- [3. If all of you agree that the defendant is not guilty of first degree murder, complete and sign the form for not guilty of first degree murder.
4. If all of you agree on a verdict of guilty or not guilty of voluntary or involuntary manslaughter, complete and sign the appropriate verdict form for each charge on which you agree. You may not find the defendant guilty of both voluntary and involuntary manslaughter [as to any count]. Do not complete or sign any other verdict forms [for that count].
5. If you cannot reach agreement as to voluntary manslaughter, involuntary manslaughter, inform me of your disagreement. Do not complete or sign any verdict form for any charge on which you cannot reach agreement.]

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*New January 2006; Revised April 2008*

## **BENCH NOTES**

### ***Instructional Duty***

In all homicide cases in which the defendant is charged with first degree murder and one or more lesser offense is submitted to the jury, the court has a **sua sponte** duty to give this instruction or CALCRIM No. 641, *Deliberations and Completion of Verdict Forms: For Use When Defendant is Charged With First Degree Murder and the Jury Is Given Only One Not Guilty Form for Each Count*. (See *People v. Avalos* (1984) 37 Cal.3d 216, 228 [207 Cal.Rptr. 549, 689 P.2d 121] [must instruct jury that it must be unanimous as to degree of murder]; *People v. Dixon* (1979) 24 Cal.3d 43, 52 [154 Cal.Rptr. 236, 592 P.2d 752] [jury must determine degree]; *People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [duty to instruct on lesser included offenses]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852] [duty to instruct that if jury has reasonable doubt of greater offense must acquit of that charge]; *People v. Fields* (1996) 13

Cal.4th 289, 309–310 [52 Cal.Rptr.2d 282, 914 P.2d 832] [duty to instruct that jury cannot convict of a lesser offense unless it has concluded that defendant is not guilty of the greater offense]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809] [duty to give jury opportunity to render a verdict of partial acquittal on a greater offense], clarified in *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280] [no duty to inquire about partial acquittal in absence of indication jury may have found defendant not guilty of greater offense].) In *Stone v. Superior Court*, *supra*, 31 Cal.3d at p. 519, the Supreme Court suggested that the trial court provide the jury with verdict forms of guilty/not guilty on each of the charged and lesser offenses. The court later referred to this “as a judicially declared rule of criminal procedure.” (*People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].) However, this is not a mandatory procedure. (*Ibid.*) If the court chooses to follow the procedure suggested in *Stone*, the court may give this instruction or CALCRIM No. 642, *Deliberations and Completion of Verdict Forms: For Use When Defendant is Charged With Second Degree Murder and Jury is Given Not Guilty Forms for Each Level of Homicide* (*Stone*), in place of this instruction.

The court should tell the jury it may not return a guilty verdict on a lesser included offense unless it has found the defendant not guilty of the greater offense. (*People v. Fields*, *supra*, 13 Cal.4th at pp. 310–311.) If the jury announces that it is deadlocked on the greater offense but, despite the court’s instructions, has returned a guilty verdict on the lesser included offense, the court should again instruct the jury that it may not convict of the lesser included offense unless it has found the defendant not guilty of the greater offense. (*Ibid.*) The court should direct the jury to reconsider the “lone verdict of conviction of the lesser included offense” in light of this instruction. (*Ibid.*; Pen. Code, § 1161.) If the jury is deadlocked on the greater offense but the court nevertheless records a guilty verdict on the lesser included offense and then discharges the jury, retrial on the greater offense will be barred. (*People v. Fields*, *supra*, 13 Cal.4th at p. 307; Pen. Code, § 1023.)

If, after following the procedures required by *Fields*, the jury declares that it is deadlocked on the greater offense, then the prosecution must elect one of the following options: (1) the prosecutor may request that the court declare a mistrial on the greater offense without recording the verdict on the lesser offense, allowing the prosecutor to retry the defendant for the greater offense; or (2) the prosecutor may ask the court to record the verdict on the lesser offense and to dismiss the greater offense, opting to accept the current conviction rather than retry the defendant on the greater offense. (*People v. Fields*, *supra*, 13 Cal.4th at p. 311.)

The court may not control the sequence in which the jury considers the various homicide offenses. (*People v. Kurtzman*, *supra*, 46 Cal.3d at pp. 330–331.)

Do not give this instruction if felony murder is the only theory for first degree murder. (*People v. Mendoza* (2000) 23 Cal.4th 896, 908–909 [98 Cal.Rptr.2d 431, 4 P.3d 265].)

## AUTHORITY

- Lesser Included Offenses—Duty to Instruct ▶ Pen. Code, § 1159; *People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094].
- Degree to Be Set by Jury ▶ Pen. Code, § 1157; *People v. Avalos* (1984) 37 Cal.3d 216, 228 [207 Cal.Rptr. 549, 689 P.2d 121]; *People v. Dixon* (1979) 24 Cal.3d 43, 52 [154 Cal.Rptr. 236, 592 P.2d 752].
- Reasonable Doubt as to Degree ▶ Pen. Code, § 1097; *People v. Morse* (1964) 60 Cal.2d 631, 657 [36 Cal.Rptr. 201, 388 P.2d 33]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852].
- Conviction of Lesser Precludes Re-trial on Greater ▶ Pen. Code, § 1023; *People v. Fields* (1996) 13 Cal.4th 289, 309–310 [52 Cal.Rptr.2d 282, 914 P.2d 832]; *People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].
- Court May Ask Jury to Reconsider Conviction on Lesser Absent Finding on Greater ▶ Pen. Code, § 1161; *People v. Fields* (1996) 13 Cal.4th 289, 310 [52 Cal.Rptr.2d 282, 914 P.2d 832].
- Must Permit Partial Verdict of Acquittal on Greater ▶ *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809].
- Involuntary Manslaughter Not a Lesser Included Offense of Voluntary Manslaughter ▶ *People v. Orr* (1994) 22 Cal.App.4th 780, 784-785 [27 Cal.Rptr.2d 553].

## Secondary Sources

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Trial, § 631.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.20 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.01[3][e], 142.02[3][c] (Matthew Bender).

**641. Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With First Degree Murder and Jury Is Given Only One Not Guilty Verdict Form for Each Count**

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[For each count charging (murder/ manslaughter),] (Y/y)ou (have been/will be) given verdict forms for guilty of [first degree murder][,] [guilty of second degree murder][,] [guilty of voluntary manslaughter][,] [guilty of involuntary manslaughter][,] and not guilty.

You may consider these different kinds of homicide in whatever order you wish, but I can accept a verdict of guilty of a lesser crime only if all of you have found the defendant not guilty of [all of] the greater crime[s].

[As with all the charges in this case,] (To/to) return a verdict of guilty or not guilty on a count, you must all agree on that decision.

Follow these directions before you give me any completed and signed, final verdict form. You will complete and sign only one verdict form [per count]. [Return the unused verdict forms to me, unsigned.]

1. If all of you agree that the People have proved beyond a reasonable doubt that the defendant is guilty of first degree murder, complete and sign that verdict form. Do not complete or sign any other verdict forms [for that count].
2. If all of you cannot agree whether the defendant is guilty of first degree murder, inform me only that you cannot reach an agreement and do not complete or sign any verdict forms [for that count].

*<In addition to paragraphs 1-2, give the following if the jury is instructed on second degree murder as a lesser included offense.>*

3. If all of you agree that the defendant is not guilty of first degree murder but also agree that the defendant is guilty of second degree murder, complete and sign the form for guilty of second degree murder. Do not complete or sign any other verdict forms [for that count].
4. If all of you agree that the defendant is not guilty of first degree murder but cannot agree whether the defendant is guilty of second degree murder, inform me that you cannot reach agreement [on

**that count]. Do not complete or sign any verdict forms [for that count].]**

*<In addition to paragraphs 1–4, give the following if the jury is instructed on second degree murder as the only lesser included offense.>*

**[5. If all of you agree that the defendant is not guilty of first degree murder and not guilty of second degree murder, complete and sign the not guilty verdict form.] Do not complete or sign any other verdict forms [for that count].]**

*< In addition to paragraphs 1–4, give the following if the jury is instructed on second degree murder and only one form of manslaughter (voluntary or involuntary) as lesser included offenses. >*

- [5. If all of you agree that the defendant is not guilty of first degree murder and not guilty of second degree murder, but also agree that the defendant is guilty of (voluntary/involuntary) manslaughter, complete and sign the form for guilty of (voluntary/involuntary) manslaughter. Do not complete or sign any other verdict forms [for that count].**
- 6. If all of you agree that the defendant is not guilty of first degree murder and not guilty of second degree murder, but cannot agree whether the defendant is guilty of (voluntary/involuntary) manslaughter, inform me that you cannot reach agreement [on that count]. Do not complete or sign any verdict forms [for that count].**
- 7. If all of you agree that the defendant is not guilty of first degree murder, not guilty of second degree murder, and not guilty of (voluntary/involuntary) manslaughter, complete and sign the verdict form for not guilty. Do not complete or sign any other verdict forms [for that count].]**

*<In addition to paragraphs 1-2, give the following if the jury is not instructed on second degree murder and the jury is instructed on one form of manslaughter (voluntary or involuntary) as the only lesser included offense.>*

- [3. If all of you agree that the defendant is not guilty of first degree murder but also agree that the defendant is guilty of (voluntary/involuntary) manslaughter, complete and sign the**

**form for guilty of (voluntary/involuntary) manslaughter. Do not complete or sign any other verdict forms [for that count].**

- 4. If all of you agree that the defendant is not guilty of first degree murder but cannot agree whether the defendant is guilty of (voluntary/involuntary) manslaughter, inform me that you cannot reach agreement [for that count]. Do not complete or sign any verdict forms [for that count].**
- 5. If all of you agree that the defendant is not guilty of first degree murder or (voluntary/involuntary) manslaughter, complete and sign the verdict form for not guilty. Do not complete or sign any other verdict forms [for that count].**

*<If the jury is instructed on **both** voluntary and involuntary manslaughter as lesser included offenses, whether the jury is instructed on second degree murder or not, the court must give the jury guilty and not guilty verdict forms as to first degree murder and all lesser crimes, and instruct pursuant to CALCRIM 640. .>*

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*New January 2006; Revised April 2008*

## **BENCH NOTES**

### ***Instructional Duty***

In all homicide cases in which the defendant is charged with first degree murder and one or more lesser offense is submitted to the jury, the court has a **sua sponte** duty to give this instruction or CALCRIM No. 640, *Deliberations and Completion of Verdict Forms: For Use When the Defendant is Charged With First Degree Murder and the Jury Is Given Not Guilty Forms for Each Level of Homicide*. (See *People v. Avalos* (1984) 37 Cal.3d 216, 228 [207 Cal.Rptr. 549, 689 P.2d 121] [must instruct jury that it must be unanimous as to degree of murder]; *People v. Dixon* (1979) 24 Cal.3d 43, 52 [154 Cal.Rptr. 236, 592 P.2d 752] [jury must determine degree]; *People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [duty to instruct on lesser included offenses]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852] [duty to instruct that if jury has reasonable doubt of greater offense must acquit of that charge]; *People v. Fields* (1996) 13 Cal.4th 289, 309–310 [52 Cal.Rptr.2d 282, 914 P.2d 832] [duty to instruct that jury cannot convict of a lesser offense unless it has concluded that defendant is not guilty of the greater offense]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809] [duty to give jury opportunity to render a verdict of partial acquittal on a greater offense], clarified in *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347,

919 P.2d 1280] [no duty to inquire about partial acquittal in absence of indication jury may have found defendant not guilty of greater offense].)

In *Stone v. Superior Court*, *supra*, 31 Cal.3d at p. 519, the Supreme Court suggested that the trial court provide the jury with verdict forms of guilty/not guilty on each of the charged and lesser offenses. The court later referred to this “as a judicially declared rule of criminal procedure.” (*People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].) However, this is not a mandatory procedure. (*Ibid.*) If the court chooses not to follow the procedure suggested in *Stone*, the court may give this instruction. If the jury later declares that it is unable to reach a verdict on a lesser offense, then the court must provide the jury an opportunity to acquit on the greater offense. (*People v. Marshall*, *supra*, 13 Cal.4th at p. 826; *Stone v. Superior Court*, *supra*, 31 Cal.3d at p. 519.) In such cases, the court must give CALCRIM No. 640 and must provide the jury with verdict forms of guilty/not guilty for each offense. (*People v. Marshall*, *supra*, 13 Cal.4th at p. 826; *Stone v. Superior Court*, *supra*, 31 Cal.3d at p. 519.)

If the greatest offense charged is second degree murder, the court should give CALCRIM 643, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and the Jury Is Given Only One Not Guilty Form for Each Count* instead of this instruction.

The court should tell the jury it may not return a guilty verdict on a lesser included offense unless it has found the defendant not guilty of the greater offense. (*People v. Fields*, *supra*, 13 Cal.4th at pp. 310–311.) If the jury announces that it is deadlocked on the greater offense but, despite the court’s instructions, has returned a guilty verdict on the lesser included offense, the court should again instruct the jury that it may not convict of the lesser included offense unless it has found the defendant not guilty of the greater offense. (*Ibid.*) The court should direct the jury to reconsider the “lone verdict of conviction of the lesser included offense” in light of this instruction. (*Ibid.*; Pen. Code, § 1161.) If the jury is deadlocked on the greater offense but the court nevertheless records a guilty verdict on the lesser included offense and then discharges the jury, retrial on the greater offense will be barred. (*People v. Fields*, *supra*, 13 Cal.4th at p. 307; Pen. Code, § 1023.)

If, after following the procedures required by *Fields*, the jury declares that it is deadlocked on the greater offense, then the prosecution must elect one of the following options: (1) the prosecutor may request that the court declare a mistrial on the greater offense without recording the verdict on the lesser offense, allowing the prosecutor to re-try the defendant for the greater offense; or (2) the prosecutor may ask the court to record the verdict on the lesser offense and to dismiss the

greater offense, opting to accept the current conviction rather than re-try the defendant on the greater offense. (*People v. Fields*, *supra*, 13 Cal.4th at p. 311.) The court may not control the sequence in which the jury considers the various homicide offenses. (*People v. Kurtzman*, *supra*, 46 Cal.3d at pp. 322, 330.)

Do not give this instruction if felony murder is the only theory for first degree murder. (*People v. Mendoza* (2000) 23 Cal.4th 896, 908–909 [98 Cal.Rptr.2d 431, 4 P.3d 265].)

## AUTHORITY

- Lesser Included Offenses—Duty to Instruct ▶ Pen. Code, § 1159; *People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094].
- Degree to Be Set by Jury ▶ Pen. Code, § 1157; *People v. Avalos* (1984) 37 Cal.3d 216, 228 [207 Cal.Rptr. 549, 689 P.2d 121]; *People v. Dixon* (1979) 24 Cal.3d 43, 52 [154 Cal.Rptr. 236, 592 P.2d 752].
- Reasonable Doubt as to Degree ▶ Pen. Code, § 1097; *People v. Morse* (1964) 60 Cal.2d 631, 657 [36 Cal.Rptr. 201, 388 P.2d 33]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852].
- Conviction of Lesser Precludes Re-trial on Greater ▶ Pen. Code, § 1023; *People v. Fields* (1996) 13 Cal.4th 289, 309–310 [52 Cal.Rptr.2d 282, 914 P.2d 832]; *People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].
- Court May Ask Jury to Reconsider Conviction on Lesser Absent Finding on Greater ▶ Pen. Code, § 1161; *People v. Fields* (1996) 13 Cal.4th 289, 310 [52 Cal.Rptr.2d 282, 914 P.2d 832].
- Must Permit Partial Verdict of Acquittal on Greater ▶ *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809].
- Involuntary Manslaughter Not a Lesser Included Offense of Voluntary Manslaughter ▶ *People v. Orr* (1994) 22 Cal.App.4th 780, 784–785 [27 Cal.Rptr.2d 553].

## Secondary Sources

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Trial, § 631.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.20 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.01[3][e], 142.02[3][c] (Matthew Bender).

**642–699. Reserved for Future Use**

**642. Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide**

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[For each count charging second degree murder,] (Y/y)ou (have been/will be) given verdict forms for guilty and not guilty of second degree murder (, /and) [voluntary manslaughter (, /and)] [involuntary manslaughter].

You may consider these different kinds of homicide in whatever order you wish, but I can accept a verdict of guilty or not guilty of [voluntary] [or] [involuntary] manslaughter only if all of you have found the defendant not guilty of second degree murder.

[As with all of the charges in this case,] (To/to) return a verdict of guilty or not guilty on a count, you must all agree on that decision.

Follow these directions before you give me any completed and signed final verdict form[s]. [Return the unused verdict form[s] to me, unsigned.]

1. If all of you agree that the People have proved beyond a reasonable doubt that the defendant is guilty of second degree murder, complete and sign that verdict form. Do not complete or sign any other verdict forms [for that count].
2. If all of you cannot agree whether the defendant is guilty of second degree murder, inform me that you cannot reach an agreement and do not complete or sign any verdict forms [for that count].

*<In addition to paragraphs 1–2, give the following if the jury is instructed on only one form of manslaughter (voluntary or involuntary) as a lesser included offense.>*

- [3. If all of you agree that the defendant is not guilty of second degree murder but also agree that the defendant is guilty of (voluntary/involuntary) manslaughter, complete and sign the form for not guilty of second degree murder and the form for guilty of (voluntary/involuntary)

**manslaughter. Do not complete or sign any other verdict forms [for that count].**

- 4. If all of you agree that the defendant is not guilty of second degree murder but cannot agree whether the defendant is guilty of (voluntary/involuntary) manslaughter, complete and sign the form for not guilty of second degree murder and inform me that you cannot reach further agreement. Do not complete or sign any other verdict forms [for that count].**
- 5. If all of you agree that the defendant is not guilty of second degree murder and not guilty of (voluntary/involuntary) manslaughter, complete and sign the verdict forms for not guilty of both.]**

*<In addition to paragraphs 1–2, give the following if the jury is instructed on both voluntary and involuntary manslaughter as lesser included offenses.>*

- [3. If all of you agree that the defendant is not guilty of second degree murder, complete and sign the form for not guilty of second degree murder.**
- 4. If all of you agree on a verdict of guilty or not guilty of voluntary manslaughter or involuntary manslaughter, complete and sign the appropriate verdict form for each charge on which you agree. Do not complete or sign any other verdict forms [for that count].**
- 5. If you cannot reach agreement as to voluntary manslaughter or involuntary manslaughter, inform me of your disagreement. You may not find the defendant guilty of both voluntary and involuntary manslaughter [as to any count]. Do not complete or sign any verdict form for any charge on which you cannot reach agreement.]**

## BENCH NOTES

### *Instructional Duty*

In all homicide cases in which second degree murder is the greatest offense charged and one or more lesser offense is submitted to the jury, the court has a **sua sponte** duty to give this instruction. (See *People v. Avalos* (1984) 37 Cal.3d 216, 228 [207 Cal.Rptr. 549, 689 P.2d 121] [must instruct jury that it must be unanimous as to degree of murder]; *People v. Dixon* (1979) 24 Cal.3d 43, 52 [154 Cal.Rptr. 236, 592 P.2d 752] [jury must determine degree]; *People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [duty to instruct on lesser included offenses]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852] [duty to instruct that if jury has reasonable doubt of greater offense must acquit of that charge]; *People v. Fields* (1996) 13 Cal.4th 289, 309–310 [52 Cal.Rptr.2d 282, 914 P.2d 832] [duty to instruct that jury cannot convict of a lesser offense unless it has concluded that defendant is not guilty of the greater offense]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809] [duty to give jury opportunity to render a verdict of partial acquittal on a greater offense], clarified in *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280] [no duty to inquire about partial acquittal in absence of indication jury may have found defendant not guilty of greater offense].) In *Stone v. Superior Court*, *supra*, 31 Cal.3d at p. 519, the Supreme Court suggested that the trial court provide the jury with verdict forms of guilty/not guilty on each of the charged and lesser offenses. The court later referred to this “as a judicially declared rule of criminal procedure.” (*People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].) However, this is not a mandatory procedure. (*Ibid.*) If the court chooses not to follow the procedure suggested in *Stone*, the court may give CALCRIM No. 643, *Deliberations and Completion of Verdict Forms: For Use When Defendant is Charged With Second Degree Murder and the Jury is Given Only One Not Guilty Verdict Form for Each Count (Homicide)* in place of this instruction.

The court should tell the jury it may not return a guilty verdict on a lesser included offense unless it has found the defendant not guilty of the greater offense. (*People v. Fields*, *supra*, 13 Cal.4th at pp. 310–311.) If the jury announces that it is deadlocked on the greater offense but, despite the court’s instructions, has returned a guilty verdict on the lesser included offense, the court should again instruct the jury that it may not convict of the lesser included offense unless it has found the defendant not guilty of the greater offense. (*Ibid.*) The court should direct the jury to reconsider the “lone verdict of conviction of the lesser included offense” in light of this instruction. (*Ibid.*; Pen. Code, § 1161.) If the jury is deadlocked on the greater offense but the court nevertheless records a guilty verdict on the lesser included offense and then discharges the jury, retrial on the greater offense will be barred. (*People v. Fields*, *supra*, 13 Cal.4th at p. 307; Pen. Code, § 1023.)

If, after following the procedures required by *Fields*, the jury declares that it is deadlocked on the greater offense, then the prosecution must elect one of the following options: (1) the prosecutor may request that the court declare a mistrial on the greater offense without recording the verdict on the lesser offense, allowing the prosecutor to retry the defendant for the greater offense; or (2) the prosecutor may ask the court to record the verdict on the lesser offense and to dismiss the greater offense, opting to accept the current conviction rather than retry the defendant on the greater offense. (*People v. Fields, supra*, 13 Cal.4th at p. 311.)

The court may not control the sequence in which the jury considers the various homicide offenses. (*People v. Kurtzman, supra*, 46 Cal.3d at pp. 330–331.)

### **AUTHORITY**

- Lesser Included Offenses—Duty to Instruct ► Pen. Code, § 1159; *People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094].
- Degree to Be Set by Jury ► Pen. Code, § 1157; *People v. Avalos* (1984) 37 Cal.3d 216, 228 [207 Cal.Rptr. 549, 689 P.2d 121]; *People v. Dixon* (1979) 24 Cal.3d 43, 52 [154 Cal.Rptr. 236, 592 P.2d 752].
- Reasonable Doubt as to Degree ► Pen. Code, § 1097; *People v. Morse* (1964) 60 Cal.2d 631, 657 [36 Cal.Rptr. 201, 388 P.2d 33]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852].
- Conviction of Lesser Precludes Re-trial on Greater ► Pen. Code, § 1023; *People v. Fields* (1996) 13 Cal.4th 289, 309–310 [52 Cal.Rptr.2d 282, 914 P.2d 832]; *People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].
- Court May Ask Jury to Reconsider Conviction on Lesser Absent Finding on Greater ► Pen. Code, § 1161; *People v. Fields* (1996) 13 Cal.4th 289, 310 [52 Cal.Rptr.2d 282, 914 P.2d 832].
- Must Permit Partial Verdict of Acquittal on Greater ► *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809].
- Involuntary Manslaughter Not a Lesser Included Offense of Voluntary Manslaughter ► *People v. Orr* (1994) 22 Cal.App.4th 780, 784–785 [27 Cal.Rptr.2d 553].

### ***Secondary Sources***

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Trial, § 631.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.20 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.01[3][e], 142.02[3][c] (Matthew Bender).

**643. Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and Jury Is Given Only One Not Guilty Verdict Form for Each Count**

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[For each count charging second degree murder,] (Y/y)ou (have been/will be) given verdict forms for guilty of second degree murder, guilty of (voluntary /involuntary) manslaughter and not guilty.

You may consider these different kinds of homicide in whatever order you wish, but I can accept a verdict of guilty of (voluntary/involuntary) manslaughter only if all of you have found the defendant not guilty of second degree murder.

[As with all the charges in this case,] (To/to) return a verdict of guilty or not guilty on a count, you must all agree on that decision.

Follow these directions before you give me any completed and signed, final verdict form. You will complete and sign only one verdict form [per count]. [Return the unused verdict forms to me, unsigned.]

1. If all of you agree that the People have proved beyond a reasonable doubt that the defendant is guilty of second degree murder, complete and sign that verdict form. Do not complete or sign any other verdict forms [for that count].
2. If all of you cannot agree whether the defendant is guilty of second degree murder, inform me only that you cannot reach an agreement and do not complete or sign any verdict forms [for that count].
3. If all of you agree that the defendant is not guilty of second degree murder, but also agree that the defendant is guilty of (voluntary/involuntary) manslaughter, complete and sign the form for guilty of (voluntary/involuntary) manslaughter. Do not complete or sign any other verdict forms [for that count].
4. If all of you agree that the defendant is not guilty of second degree murder and not guilty of (voluntary/involuntary) manslaughter, complete and sign the verdict form for not guilty.

**Do not complete or sign any other verdict forms [for that count].]**

*<If the jury is instructed on **both** voluntary and involuntary manslaughter as lesser included offenses, this instruction may not be used. The court must give the jury guilty and not guilty verdict forms as to second degree murder and each form of manslaughter, and must instruct pursuant to CALCRIM 642..>*

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*New January 2006; Revised April 2008*

## **BENCH NOTES**

### ***Instructional Duty***

In all homicide cases in which the greatest offense charged is second degree murder and one or more lesser offense is submitted to the jury, the court has a **sua sponte** duty to give this instruction or CALCRIM No. 642, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide*. (See *People v. Avalos* (1984) 37 Cal.3d 216, 228 [207 Cal.Rptr. 549, 689 P.2d 121] [must instruct jury that it must be unanimous as to degree of murder]; *People v. Dixon* (1979) 24 Cal.3d 43, 52 [154 Cal.Rptr. 236, 592 P.2d 752] [jury must determine degree]; *People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [duty to instruct on lesser included offenses]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852] [duty to instruct that if jury has reasonable doubt of greater offense must acquit of that charge]; *People v. Fields* (1996) 13 Cal.4th 289, 309–310 [52 Cal.Rptr.2d 282, 914 P.2d 832] [duty to instruct that jury cannot convict of a lesser offense unless it has concluded that defendant is not guilty of the greater offense]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809] [duty to give jury opportunity to render a verdict of partial acquittal on a greater offense], clarified in *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280] [no duty to inquire about partial acquittal in absence of indication jury may have found defendant not guilty of greater offense].)

In *Stone v. Superior Court*, *supra*, 31 Cal.3d at p. 519, the Supreme Court suggested that the trial court provide the jury with verdict forms of guilty/not guilty on each of the charged and lesser offenses. The court later referred to this “as a judicially declared rule of criminal procedure.” (*People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].) However, this is not a mandatory procedure. (*Ibid.*) If the court chooses not to follow the procedure suggested in *Stone*, the court may give this instruction. If the jury later declares

that it is unable to reach a verdict on a lesser offense, then the court must provide the jury an opportunity to acquit on the greater offense. (*People v. Marshall, supra*, 13 Cal.4th at p. 826; *Stone v. Superior Court, supra*, 31 Cal.3d at p. 519.) In such cases, the court must give CALCRIM No. 642 and must provide the jury with verdict forms of guilty/not guilty for each offense. (*People v. Marshall, supra*, 13 Cal.4th at p. 826; *Stone v. Superior Court, supra*, 31 Cal.3d at p. 519.)

The court should tell the jury it may not return a guilty verdict on a lesser included offense unless it has found the defendant not guilty of the greater offense. (*People v. Fields, supra*, 13 Cal.4th at pp. 310–311.) If the jury announces that it is deadlocked on the greater offense but, despite the court’s instructions, has returned a guilty verdict on the lesser included offense, the court should again instruct the jury that it may not convict of the lesser included offense unless it has found the defendant not guilty of the greater offense. (*Ibid.*) The court should direct the jury to reconsider the “lone verdict of conviction of the lesser included offense” in light of this instruction. (*Ibid.*; Pen. Code, § 1161.) If the jury is deadlocked on the greater offense but the court nevertheless records a guilty verdict on the lesser included offense and then discharges the jury, retrial on the greater offense will be barred. (*People v. Fields, supra*, 13 Cal.4th at p. 307; Pen. Code, § 1023.)

If, after following the procedures required by *Fields*, the jury declares that it is deadlocked on the greater offense, then the prosecution must elect one of the following options: (1) the prosecutor may request that the court declare a mistrial on the greater offense without recording the verdict on the lesser offense, allowing the prosecutor to re-try the defendant for the greater offense; or (2) the prosecutor may ask the court to record the verdict on the lesser offense and to dismiss the greater offense, opting to accept the current conviction rather than re-try the defendant on the greater offense. (*People v. Fields, supra*, 13 Cal.4th at p. 311.) The court may not control the sequence in which the jury considers the various homicide offenses. (*People v. Kurtzman, supra*, 46 Cal.3d at pp. 322, 330.)

## AUTHORITY

- Lesser Included Offenses—Duty to Instruct ► Pen. Code, § 1159; *People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094].
- Degree to Be Set by Jury ► Pen. Code, § 1157; *People v. Avalos* (1984) 37 Cal.3d 216, 228 [207 Cal.Rptr. 549, 689 P.2d 121]; *People v. Dixon* (1979) 24 Cal.3d 43, 52 [154 Cal.Rptr. 236, 592 P.2d 752].

- Reasonable Doubt as to Degree ► Pen. Code, § 1097; *People v. Morse* (1964) 60 Cal.2d 631, 657 [36 Cal.Rptr. 201, 388 P.2d 33]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852].
- Conviction of Lesser Precludes Re-trial on Greater ► Pen. Code, § 1023; *People v. Fields* (1996) 13 Cal.4th 289, 309–310 [52 Cal.Rptr.2d 282, 914 P.2d 832]; *People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].
- Court May Ask Jury to Reconsider Conviction on Lesser Absent Finding on Greater ► Pen. Code, § 1161; *People v. Fields* (1996) 13 Cal.4th 289, 310 [52 Cal.Rptr.2d 282, 914 P.2d 832].
- Must Permit Partial Verdict of Acquittal on Greater ► *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809].
- Involuntary Manslaughter Not a Lesser Included Offense of Voluntary Manslaughter ► *People v. Orr* (1994) 22 Cal.App.4th 780, 784-785 [27 Cal.Rptr.2d 553].

### *Secondary Sources*

5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Trial, § 631.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.20 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.01[3][e], 142.02[3][c] (Matthew Bender).

### **644–699. Reserved for Future Use**

**1195. Contacting Minor with Intent to Commit Certain Felonies (Pen. Code, § 288.3(a))**

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The defendant is charged [in Count \_\_] with contacting a minor with the intent to commit \_\_\_\_\_ <insert enumerated offense from statute> [in violation of Penal Code section 288.3(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (contacted or communicated/ [or] attempted to contact or communicate) with a minor;
2. When the defendant did so, (he/she) intended to commit \_\_\_\_\_ <insert enumerated offense from statute> involving that minor;

**AND**

3. The defendant knew or reasonably should have known that the person was a minor.

A *minor* is a person under the age of 18.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

*Contacting or communicating* with a minor includes direct and indirect contact or communication. [[That communication may take place personally or by using (an agent or agency/ [or] any print medium/ [or] any postal service/ [or] a common carrier/ [or] communication common carrier/ [or] any electronic communications system/ [or] any telecommunications/ [or] wire/ [or] computer/ [or] radio communications [device or system].]

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*New [insert date of council approval]*

**BENCH NOTES**

*Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Instruct on the enumerated offense as appropriate.

### **AUTHORITY**

- Elements and Enumerated Offenses ► Pen. Code, § 288.3(a).
- Calculating Age ► Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 273, 855 P.2d 391].

### ***Secondary Sources***

2 Witkin & Epstein, California Criminal Law (3d ed. 2008 supp.) Chapter VI. Sex Offenses and Crimes Against Decency § 54B.

**1196. Arranging Meeting with Minor for Lewd Purpose (Pen. Code, § 288.4(a)(1))**

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The defendant is charged [in Count \_\_\_\_] with arranging a meeting with a minor for a lewd purpose [while having a prior conviction] [in violation of Penal Code section 288.4(a)(1)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant arranged a meeting with (a minor / [or] a person (he/she) believed to be a minor);
2. When the defendant did so, (he/she) was motivated by an unnatural or abnormal sexual interest in children;

[AND]

3. At that meeting, the defendant intended to (expose (his/her) genitals or pubic or rectal area/ [or] have the child expose (his/her) genitals or pubic or rectal area/ [or] engage in lewd or lascivious behavior)(;/.)

[AND]

4. When the defendant did so, (he/she) had a prior conviction for \_\_\_\_\_ <insert description and code section for offense listed in subdivision (c) of Penal Code section 290>.

**A minor is a person under the age of 18.**

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Lewd and lascivious behavior* includes any touching of a person with the intent to sexually arouse the perpetrator or the other person. The touching need not be done in a lewd or sexual manner. Lewd or lascivious behavior includes touching any part of the person's body, either on the bare skin or through the clothes the person is wearing. [A lewd or lascivious act includes causing someone to touch his or her own body or someone else's body at the instigation of the perpetrator who has the required intent.]]

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*New [insert date of council approval]*

## **BENCH NOTES**

### ***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

## **AUTHORITY**

- Elements and Enumerated Offenses ▶ Pen. Code, § 288.4.
- Lewd Defined ▶ See *In re Smith* (1972) 7 Cal.3d 362, 365 [102 Cal.Rptr. 335, 497 P.2d 807] [in context of indecent exposure]; see *Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 256-257, fn. 13 [158 Cal.Rptr. 330, 599 P.2d 636].
- Calculating Age ▶ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 273, 855 P.2d 391].

### ***Secondary Sources***

2 Witkin & Epstein, California Criminal Law (3d ed. 2008 supp.) Chapter VI. Sex Offenses and Crimes Against Decency § 54A.

**1197. Going to Meeting with Minor for Lewd Purpose (Pen. Code, § 288.4(b))**

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The defendant is charged [in Count \_\_] with going to a meeting with a minor for a lewd purpose [in violation of Penal Code section 288.4(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant arranged a meeting with (a minor/ [or] a person (he/she) believed to be a minor);
2. When the defendant did so, (he/she) was motivated by an unnatural or abnormal sexual interest in children;
3. At that meeting, the defendant intended to (expose (his/her) genitals or pubic or rectal area/ [or] have the child expose (his/her) genitals or pubic or rectal area/ [or] engage in lewd or lascivious behavior);

**AND**

4. The defendant went to the arranged meeting place at or about the arranged time.

A *minor* is a person under the age of 18.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Lewd and lascivious behavior* includes any touching of a person with the intent to sexually arouse the perpetrator or the other person. The touching need not be done in a lewd or sexual manner. Lewd or lascivious behavior includes touching any part of the person's body, either on the bare skin or through the clothes the person is wearing. [A lewd or lascivious act includes causing someone to touch his or her own body or someone else's body at the instigation of the perpetrator who has the required intent.]]

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*New [insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

## AUTHORITY

- Elements and Enumerated Offenses ▶ Pen. Code, § 288.4.
- Lewd Defined ▶ See *In re Smith* (1972) 7 Cal.3d 362, 365 [102 Cal.Rptr. 335, 497 P.2d 807] [in context of indecent exposure]; see *Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 256-257, fn. 13 [158 Cal.Rptr. 330, 599 P.2d 636].
- Calculating Age ▶ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 273, 855 P.2d 391].

### *Secondary Sources*

2 Witkin & Epstein, California Criminal Law (3d ed. 2008 supp.) Chapter VI. Sex Offenses and Crimes Against Decency § 54A.

**1198. Engaging in Sexual Intercourse or Sodomy with Child Ten Years of Age or Younger (Pen. Code, § 288.7(a))**

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The defendant is charged [in Count \_\_\_\_] with engaging in (sexual intercourse/ [or] sodomy) with a child under ten years of age [in violation of Penal Code section 288.7(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant engaged in an act of (sexual intercourse/ [or] sodomy) with \_\_\_\_\_ <insert name of complaining witness>;
2. When the defendant did so, \_\_\_\_\_ <insert name of complaining witness> was ten years of age or younger;
3. At the time of the act, the defendant was at least 18 years old.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[Sodomy is any penetration, no matter how slight, of the anus of one person by the penis of another person. [Ejaculation is not required.]]

[Sexual intercourse means any penetration, no matter how slight, of the vagina or genitalia by the penis. [Ejaculation is not required.]]

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New [insert date of council approval]

**BENCH NOTES**

***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

**AUTHORITY**

- Elements ▶ Pen. Code, § 288.7(a).
- Sexual Intercourse Defined ▶ Pen. Code, § 263; *People v. Karsai* (1982) 131 Cal.App.3d 224, 233–234 [182 Cal.Rptr. 406], disapproved on other grounds by *People v. Jones* (1988) 46 Cal.3d 585, 600 [250 Cal.Rptr. 635, 758 P.2d 1165].
- Sodomy Defined ▶ Pen. Code, § 286(a); see *People v. Singh* (1923) 62 Cal.App. 450, 452 [217 P. 121] [ejaculation is not required].
- Calculating Age ▶ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 273, 855 P.2d 391].

### ***Secondary Sources***

2 Witkin & Epstein, California Criminal Law (3d ed. 2008 supp.) Chapter VI. Sex Offenses and Crimes Against Decency § 21.

**1199. Engaging in Oral Copulation or Sexual Penetration with Child Ten Years of Age or Younger (Pen. Code, § 288.7(b))**

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The defendant is charged [in Count \_\_\_\_] with engaging in (oral copulation/ [or] sexual penetration) with a child under ten years of age [in violation of Penal Code section 288.7(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant engaged in an act of (oral copulation/ [or] sexual penetration) with \_\_\_\_\_ <insert name of complaining witness>;
2. When the defendant did so, \_\_\_\_\_ <insert name of complaining witness> was ten years of age or younger;
3. At the time of the act, the defendant was at least 18 years old.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Oral copulation* is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.]

[*Sexual penetration* means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) for the purpose of sexual abuse, arousal, or gratification by any foreign object, substance, instrument, or device, or by any unknown object.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

[An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object penetrated the opening.]

**[A foreign object, substance, instrument, or device includes any part of the body except a sexual organ.]**

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*New [insert date of council approval]*

## **BENCH NOTES**

### ***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

## **AUTHORITY**

- Elements ▶ Pen. Code, § 288.7(b).
- Sexual Penetration Defined ▶ Pen. Code, § 289(k)(1); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not the vagina].
- Unknown Object Defined ▶ Pen. Code, § 289(k)(3).
- Foreign Object, Substance, Instrument, or Device Defined ▶ Pen. Code, § 289(k)(2); *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [a finger is a “foreign object”].
- Oral Copulation Defined ▶ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].
- Calculating Age ▶ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 273, 855 P.2d 391].

### ***Secondary Sources***

2 Witkin & Epstein, California Criminal Law (3d ed. 2008 supp.) Chapter VI. Sex Offenses and Crimes Against Decency § 21.

### 1243. Human Trafficking (Pen. Code, § 236.1(a), (c))

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The defendant is charged [in Count \_\_\_\_] with human trafficking [in violation of Penal Code section 236.1].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant either deprived another person of personal liberty or violated that other person's personal liberty;

[AND]

2. When the defendant did so, (he/she) intended to (obtain forced labor or services/(commit/ [or] maintain) a [felony] violation of (\_\_\_\_\_ <insert appropriate code section[s]>));

[AND]

3. When the defendant did so, the other person was under 18 years of age.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

**Deprivation or violation of personal liberty**, as used here, includes substantial and sustained restriction of another's liberty accomplished through \_\_\_\_\_ <insert terms that apply from statutory definition, i.e.: fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person> **under circumstances in which the person receiving or perceiving the threat reasonably believes that it is likely that the person making the threat would carry it out.**

**[Forced labor or services]**, as used here, means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, or coercion, or equivalent conduct that would reasonably overbear the will of the person.]

**[Duress]** means a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity to do [or submit to] something that he or she would not otherwise

do [or submit to]. When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and (his/her) relationship to the defendant.]

[*Duress* includes knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.]

[*Violence* means using physical force that is greater than the force reasonably necessary to restrain someone.]

[*Menace* means a verbal or physical threat of harm[, including use of a deadly weapon]. The threat of harm may be express or implied.]

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*New [insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If necessary, insert the correct Penal Code section into the blank provided in element two and give the corresponding CALCRIM instruction.

Give bracketed element three if the defendant is charged with a violation of Pen. Code, § 236.1(c).

This instruction is based on the language of the statute effective January 1, 2006, and only applies to crimes committed on or after that date.

The court is not required to instruct sua sponte on the definition of “duress,” “menace,” or “violence” and Penal Code section 236.1 does not define these terms. (*People v. Pitmon* (1985) 170 Cal.App.3d 38, 52 [216 Cal.Rptr. 221] [duress]). Optional definitions are provided for the court to use at its discretion.

The definition of “duress” is based on *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071] in the context of lewd acts on a child, and *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221]. In *People v. Leal*, *supra*, 33 Cal.4th at pp. 1004–1010, the court held that the statutory definition of “duress” contained in Penal Code sections 261 and 262 does not apply to the use of that term in any other statute.

## AUTHORITY

- Elements and Definitions ▶ Pen. Code, §§ 236.1.
- Menace Defined [in context of false imprisonment] ▶ *People v. Matian* (1995) 35 Cal.App.4th 480, 484–486 [41 Cal.Rptr.2d 459].
- Violence Defined [in context of false imprisonment] ▶ *People v. Babich* (1993) 14 Cal.App.4th 801, 806 [18 Cal.Rptr.2d 60].
- Duress Defined [in context of lewd acts on child] ▶ *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221].
- Calculating Age ▶ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 273, 855 P.2d 391].

### *Secondary Sources*

1 Witkin & Epstein, California Criminal Law (2008 Supp.) Crimes Against the Person, §§ 78A.

**2041. Fraudulent Possession of Personal Identifying Information  
(Pen. Code, § 530.5(c)(1), (2) or (3))**

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The defendant is charged [in Count \_\_\_\_] with the fraudulent possession of personal identifying information [with a prior conviction for the same offense][in violation of Penal Code section 530.5(c) ((1)/(2)/(3))].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant acquired or kept the personal identifying information of (another person/ten or more other persons);

[AND]

2. The defendant did so with the intent to defraud another person(;/.)

*<Give paragraph 3 if defendant is charged with having a prior conviction and has not stipulated to that conviction.>*

[AND]

3. The defendant has a prior conviction for \_\_\_\_\_ *<insert prior conviction suffered pursuant to Penal Code section 530.5>.*

A person intends to *defraud* if he or she intends to deceive another person in order to cause a loss of (money[;]/ [or] goods[;]/ [or] services[;]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

*Personal identifying information* includes a person's (name [;]/ [and] address[;]/ [and] telephone number[;]/ [and] health insurance identification number[;]/ [and] taxpayer identification number[;]/ [and] school identification number[;]/ [and] state or federal driver's license number or identification number[;]/ [and] social security number[;]/ [and] place of employment[;]/ [and] employee identification number[;]/ [and] mother's maiden name[;]/ [and] demand deposit account number[;]/ [and] savings account number[;]/ [and] checking account number[;]/ [and] PIN (personal identification number) or password[;]/ [and] alien registration number[;]/ [and] government passport number[;]/ [and] date of birth[;]/ [and] unique biometric data such as fingerprints, facial-scan identifiers, voice print, retina or iris image, or other unique physical representation[;]/ [and] unique

electronic data such as identification number, address, or routing code, telecommunication identifying information or access device[;]/ [and] information contained in a birth or death certificate[;]/ and credit card number) or an equivalent form of identification.

[As used here, the term “person” means a human being, whether living or dead, or a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity or any other legal entity.]

It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.

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*New [insert council approval date]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed sentence that begins with “As used here” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

In the definition of personal identifying information, give the relevant items based on the evidence presented.

## AUTHORITY

- Elements ▶ Pen. Code, § 530.5(c).
- Personal Identifying Information Defined ▶ Pen. Code, § 530.55(b).
- Person Defined ▶ Pen. Code, § 530.55(a).
- Intent to Defraud—Defined ▶ *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity ▶ Pen. Code, § 8.

*Secondary Sources*

2 Witkin & Epstein, California Criminal Law (2008 Supp.) Crimes Against Property, § 209A.

**2042. Fraudulent Sale, Transfer or Conveyance of Personal Identifying Information (Pen. Code, § 530.5(d)(1))**

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The defendant is charged [in Count \_\_\_\_] with the (fraudulent sale/ [or] transfer/ [or] conveyance) of personal identifying information [in violation of Penal Code section 530.5(d)(1)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (sold/ [or] transferred/ [or] conveyed) the personal identifying information of another person;

**AND**

2. The defendant did so with the intent to defraud.

A person intends to *defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

*Personal identifying information* includes a person's (name [;]/ [and] address[;]/ [and] telephone number[;]/ [and] health insurance identification number[;]/ [and] taxpayer identification number[;]/ [and] school identification number[;]/ [and] state or federal driver's license number or identification number[;]/ [and] social security number[;]/ [and] place of employment[;]/ [and] employee identification number[;]/ [and] mother's maiden name[;]/ [and] demand deposit account number[;]/ [and] savings account number[;]/ [and] checking account number[;]/ [and] PIN (personal identification number) or password[;]/ [and] alien registration number[;]/ [and] government passport number[;]/ [and] date of birth[;]/ [and] unique biometric data such as fingerprints, facial-scan identifiers, voice print, retina or iris image, or other unique physical representation[;]/ [and] unique electronic data such as identification number, address, or routing code, telecommunication identifying information or access device[;]/ [and] information contained in a birth or death certificate[;]/ and credit card number) or an equivalent form of identification.

[As used here, the term "person" means a human being, whether living or dead, or a firm, association, organization, partnership, business trust,

company, corporation, limited liability company, public entity or any other legal entity.]

**It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.**

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*New [insert council approval date]*

## **BENCH NOTES**

### ***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed sentence that begins with “As used here” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

In the definition of personal identifying information, give the relevant items based on the evidence presented.

## **AUTHORITY**

- Elements ▶ Pen. Code, § 530.5(d).
- Personal Identifying Information Defined ▶ Pen. Code, § 530.55(b).
- Person Defined ▶ Pen. Code, § 530.55(a).
- Intent to Defraud—Defined ▶ *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity ▶ Pen. Code, § 8.

### ***Secondary Sources***

2 Witkin & Epstein, California Criminal Law (2008 Supp.) Crimes Against Property, § 209A.

**2043. Knowing Sale, Transfer, or Conveyance of Personal Identifying Information to Facilitate Its Unauthorized Use (Pen. Code, § 530.5(d)(2))**

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The defendant is charged [in Count \_\_\_\_] with the knowing (sale/ [or] transfer [or] conveyance) of personal identifying information [in violation of Penal Code section 530.5(d)(2)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (sold/ [or] transferred/ [or] conveyed) the personal identifying information of (a specific person/ \_\_\_\_\_<insert name of victim>);

**AND**

2. When the defendant did so, (he/she) knew that the personal identifying information would be used to obtain or attempt to obtain (credit/ [or] goods/ [or] services/ [or] real property/ [or] medical information) [[or] \_\_\_\_\_insert other unlawful purpose> ] without the consent of that specific person.

*Personal identifying information* includes a person's (name [;]/ [and] address[;]/ [and] telephone number[;]/ [and] health insurance identification number[;]/ [and] taxpayer identification number[;]/ [and] school identification number[;]/ [and] state or federal driver's license number or identification number[;]/ [and] social security number[;]/ [and] place of employment[;]/ [and] employee identification number[;]/ [and] mother's maiden name[;]/ [and] demand deposit account number[;]/ [and] savings account number[;]/ [and] checking account number[;]/ [and] PIN (personal identification number) or password[;]/ [and] alien registration number[;]/ [and] government passport number[;]/ [and] date of birth[;]/ [and] unique biometric data such as fingerprints, facial-scan identifiers, voice print, retina or iris image, or other unique physical representation[;]/ [and] unique electronic data such as identification number, address, or routing code, telecommunication identifying information or access device[;]/ [and] information contained in a birth or death certificate[;]/ and credit card number) or an equivalent form of identification.

[As used here, the term “person” means a human being, whether living or dead, or a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity or any other legal entity.]

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*New [insert council approval date]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed sentence that begins with “As used here” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

In the definition of personal identifying information, give the relevant items based on the evidence presented.

The definition of unlawful purpose is not limited to acquiring information for financial motives, and may include any unlawful purpose for which the defendant may have acquired the personal identifying information, such as using the information to facilitate violation of a restraining order. (*See, e.g., People v. Tillotson* (2007) 157 Cal. App. 4th 517, 533.)

## AUTHORITY

- Elements ▶ Pen. Code, § 530.5(d)(2).
- Personal Identifying Information Defined ▶ Pen. Code, § 530.55(b).
- Person Defined ▶ Pen. Code, § 530.55(a).

### *Secondary Sources*

2 Witkin & Epstein, California Criminal Law (2008 Supp.) Crimes Against Property, § 209A.

**2997. Money Laundering (Pen. Code, § 186.10)**

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**The defendant is charged [in Count \_\_\_\_] with money laundering [in violation of Penal Code section 186.10].**

**To prove that the defendant is guilty of this crime, the People must prove that:**

- 1. The defendant (conducted/ [or] attempted to conduct) one or more financial transactions involving at least one monetary instrument through at least one financial institution;**
- 2. The financial transaction[s] involved [a] monetary instrument[s] valued at more than (\$5,000 within a seven-day period/ [or] \$25,000 within a 30-day period);**

**[AND]**

*<Give 3A, 3B or both, as appropriate>*

**[3A. When the defendant did so, (he/she) intended to (promote/ [or] manage/ [or] establish/ [or] carry on/ [or] facilitate) criminal activity;]**

**[OR]**

**[3B. The defendant knew that the monetary instrument[s] represented the proceeds of criminal activity or (was/were) derived directly or indirectly from the proceeds of criminal activity(;/.)]**

**[AND]**

*<Give element 4 as appropriate if the defendant is an attorney>*

**[4. The attorney defendant accepted a fee for representing a client in a criminal investigation or proceeding and accepted the monetary instrument with the intent to disguise or aid in disguising the source of the funds or the nature of the criminal activity.]**

**[AND]**

(4./5.) The [total] value of the [attempted] transaction[s] was more than \_\_\_\_\_<inserted alleged minimum value> but less than \_\_\_\_\_<insert alleged top limit>.]

**Conducting** includes, but is not limited to, initiating, participating in, or concluding a transaction.

**Financial institution** means (any national bank or banking institution/ \_\_\_\_\_<insert appropriate entity from Pen. Code, §§ 186.9(b)>) located or doing business in the state of California.

**A transaction** includes the (deposit/ [or] withdrawal/ [or] transfer/ [or] bailment/ [or] loan/ [or] pledge/ [or] payment/ [or] exchange of currency/ [or] a monetary instrument/ [or] the electronic, wire, magnetic, or manual transfer) of funds between accounts by, through, or to, a financial institution.

**A monetary instrument** means (money of the United States of America/ [or] \_\_\_\_\_<insert appropriate item from Pen. Code, §§ 186.9(d)>).

**Criminal activity** means a criminal offense punishable (under the laws of the state of California by [death or] imprisonment in the state prison/ [or] from a criminal offense committed in another jurisdiction under the laws of that jurisdiction punishable by death or imprisonment for a term exceeding one year).

**[Foreign bank draft]** means a bank draft or check issued or made out by a (foreign bank/ [or] savings and loan/ [or] casa de cambio/ [or] credit union/ [or] currency dealer or exchanger/ [or] check cashing business/ [or] money transmitter/ [or] insurance company/ [or] investment or private bank/ [or] any other foreign financial institution that provides similar financial services, on an account in the name of the foreign bank or foreign financial institution held at a bank or other financial institution located in the United States or a territory of the United States.)

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*New [insert date of council approval]*

## **BENCH NOTES**

### ***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the definition of proceeds is an issue, see *United States v. Santos* (2008) \_\_U.S. \_\_, 128 S.Ct. 2020, 2022, 170 L.Ed.2d 912, holding that “proceeds” in the federal money laundering statute means “profits” in the context of an illegal gambling scheme.

### **AUTHORITY**

- Elements ▶ Pen. Code, § 186.10; *People v. Mays* (2007) 148 Cal.App.4th 13, 29.
- Definitions ▶ Pen. Code, §§ 186.9.
- Definition of Proceeds ▶ *United States v. Santos* (2008) \_\_U.S. \_\_, 128 S.Ct. 2020, 2022, 170 L.Ed.2d 912.

### ***Secondary Sources***

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Governmental Authority, § 155.

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